

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

MALCOLM WASHINGTON,

Plaintiff,
v.

9:20-CV-0023
(GLS/TWD)

SHERIFF HARDER et al.,

Defendants.

APPEARANCES:

MALCOLM WASHINGTON

Plaintiff, pro se

16-B-2263

Franklin Correctional Facility

P.O. Box 10

Malone, NY 12953

GARY L. SHARPE

Senior United States District Judge

ORDER

Pro se plaintiff Malcolm Washington commenced this action on January 8, 2020, by filing a Complaint for relief pursuant to 42 U.S.C. § 1983 and an application to proceed in forma pauperis. Dkt. Nos. 1 ("Compl."); 5 ("IFP Application"). By Decision and Order filed February 27, 2020 (the "February 2020 Order"), the Court granted Plaintiff's IFP application and reviewed the sufficiency of the Complaint in accordance with 28 U.S.C. § 1915(e) and 28 U.S.C. § 1915A. Dkt. No. 7. On the basis of that review, the Court dismissed the Complaint for failure to state a claim upon which relief could be granted. *Id.* In light of his pro se status, Plaintiff was afforded an opportunity to submit an Amended Complaint. See *id.* at 10.

On March 18, 2018, Plaintiff filed a document entitled "Amended Complaint." Dkt. No. 8. In a Decision and Order filed on April 7, 2020 (the "April 2020 Order"), the Court refused to accept the submission as an Amended Complaint reasoning:

Plaintiff's submission presently before the Court is not in compliance with N.D.N.Y. Local Rule 7.1(a)(4). The submission is one page and unsigned. See Dkt. No. 8. The document does not include a list of parties, any claims, or any request for relief. See *id.* Moreover, while Plaintiff explains that he seeks to include new defendants, he has not included his prior claims, nor has he indicated whether he intends to abandon his prior claims against Sheriff Harder. As noted above, Plaintiff may not submit an amended complaint and at the same time proceed with the original complaint. Compliance with this Court's local rules is "not merely technical in nature." See *Cusamano v. Sobek*, 604 F. Supp. 2d 416, 508 (N.D.N.Y. 2009).

Dkt. No. 9 at 3.

The Court directed Plaintiff to submit an amended pleading, within sixty days, in compliance with the Court's Local Rules and the February 2020 Order. Dkt. No. 9.

On May 7, 2020, in lieu of an Amended Complaint, Plaintiff filed a motion for the appointment of counsel. Dkt. No. 11. In a Decision and Order filed on May 7, 2020 (the "May 2020 Order"), the Court denied the motion and granted an extension of time, for thirty days, for Plaintiff to comply with the February 2020 Order. Dkt. No. 12.

In May and June 2020, in lieu of an Amended Complaint, Plaintiff filed a motion for recusal of the Magistrate Judge and a motion for summary judgment. Dkt. Nos. 13 and 15. On June 16, 2020, the Court issued an Order denying the motions and provided Plaintiff with one "final" opportunity to comply with the February 2020 Order. Dkt. No. 16. Plaintiff was advised that, if he wished to proceed with the action, he must file an Amended Complaint within thirty days. *Id.*

From June 2020 until September 2020, in lieu of an Amended Complaint, Plaintiff filed various submissions with the Court including the following motions: (1) a motion for reconsideration of the June Order; (2) a second motion for reconsideration of the June Order; and (3) a second motion for the appointment of counsel. See Dkt. Nos. 17, 21, 24 . In August 2020, September 2020, and October 2020, the Court denied the aforementioned motions. Dkt. Nos. 20, 23, and 25. In the October 2020 Order, Plaintiff was advised, "[i]n light of Plaintiff's pro se status, the deadline for submission of an Amended Complaint is extended to 11/23/2020." Dkt. No. 25.

From October 2020 though February 3, 2021, in lieu of an Amended Complaint, Plaintiff filed three letters seeking a status update on his case, state court documents, and a request for interrogatories. Dkt. Nos. 26, 27, 28, 29, and 30. To date, Plaintiff has failed to comply with the February 2020 Order or any subsequent Order directing Plaintiff to provide an Amended Complaint.

Given the procedural history of this case, it is an appropriate exercise of the Court's discretion to dismiss Plaintiff's action at this juncture for failure to comply with the Court's Orders.

WHEREFORE, it is hereby

ORDERED that this action is **DISMISSED without prejudice** in accordance with 28 U.S.C. § 1915(e)(2)(B)(ii) and 28 U.S.C. § 1915A(b)(1); and it is further

ORDERED that the Clerk shall enter judgment accordingly; and it is further

ORDERED that the Clerk shall serve a copy of this Decision and Order and a docket report on Plaintiff in accordance with the Local Rules of Practice.

IT IS SO ORDERED.

February 4, 2021
Albany, New York

Gary L. Sharpe
Gary L. Sharpe
U.S. District Judge